

See 2709

United States

# Circuit Court of Appeals

For the Ninth Circuit.

HOONAH PACKING COMPANY, a Corporation,  
Plaintiff in Error,

vs.

TERRITORY OF ALASKA,  
Defendant in Error.

## Transcript of Record.

Upon Writ of Error to the United States District Court of the  
District of Alaska, Division No. 1.

**Filed**

JAN 27 1916

**F. D. Monckton,**  
Clerk.



No. 2713

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Circuit Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Names and Addresses of Counsel.]

CHENEY & ZIEGLER, Juneau, Alaska,  
Attorneys for Plaintiff in Error.

J. H. COBB, Juneau, Alaska,  
Attorney for Defendant in Error.

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*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

No. 1326-A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

HOONAH PACKING CO., a Corporation,

Defendant.

**Complaint.**

The above-named plaintiff complaining of the above-named defendant, for cause of action alleges:

I.

The defendant is a corporation, duly incorporated, and engaged in the fishing and canning business in the Territory of Alaska.

II.

That during the month of June, 1915, and continuously up to the present time, the said defendant was engaged in, and prosecuting and attempting to prosecute the business of fishing by means of eleven (11) fish-traps in the Territory of Alaska, which said traps are more particularly described as follows:

1st. A certain trap designated as No. 3, situate at Gull Cove, Idaho Inlet, in Icy Straits.

2d. A certain trap designated as No. 4, situate on the west shore of Mud Bay in Icy Straits.

3d. A certain trap designated as No. 6, situate at Mud Bay in the waters of Icy Straits.

4th. A certain trap designated as No. 9, situate [1\*] on the east side of Mud Bay in Icy Straits.

5th. A certain trap designated as No. 10, situate on the east side of Idaho Inlet in Icy Straits.

6th. A certain trap situated about two miles south of Funter Bay on the west shore of Admiralty Island, in the waters of Chatham Straits, and in front of U. S. Survey No. 804.

7th. Five (5) other traps, the exact location and description of which are to the plaintiff unknown, but all of which are within the waters of South-eastern Alaska.

### III.

That by an act of the Alaska legislature, approved April 29th, 1915, entitled "An act to establish a system of taxation, create revenue, and provide for collection thereof, for the Territory of Alaska, and for other purposes; and to amend an act entitled 'An act to establish a system of taxation, create revenue, and provide for collection thereof for the Territory of Alaska, and for other purposes,' approved May 1, 1913, and declaring an emergency,"—a tax of One Hundred Dollars (\$100) was imposed upon each and every fish-trap, which said tax, by the terms of said act, became due and payable on the 1st day of July, 1915.

### IV.

That the defendant, though prosecuting the busi-

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\*Page-number appearing at foot of page of original certified Record.



ness of taking fish in said traps as aforesaid during the current season, has failed, neglected and refused to pay said tax or any part thereof.

WHEREFORE, plaintiff sues and prays judgment for the sum of Eleven Hundred Dollars (\$1100.) with interest [2] thereon at the rate of eight (8) per cent per annum from July 1st, 1915, and all costs of suit.

J. H. COBB,

Chief Counsel for the Territory of Alaska.

United States of America,  
Territory of Alaska,—ss.

J. H. Cobb, being first sworn, on oath deposes and says; I am chief counsel for the Territory of Alaska. The above and foregoing complaint is true as I verily believe.

J. H. COBB,

Subscribed and sworn to before me this 7th day of July, A. D. 1915.

E. L. COBB,

[Notarial Seal]

E. L. COBB,

Notary Public in and for Alaska.

My commission expires Dec. 3, 1918.

Filed in the District Court, District of Alaska, First Division. Jul. 7, 1915. J. W. Bell, Clerk. By John T. Reed, Deputy.

[Endorsed]: Original. No. ——. In the District Court for the Territory of Alaska, Division Number One, at Juneau. The Territory of Alaska, Plaintiff, vs. Hoonah Packing Co., a Corporation, Defendant. Complaint. J. H. Cobb, Chief Counsel for the Territory of Alaska. [3]

*In the District Court for the District of Alaska, Division Number One, at Juneau.*

Case Number 1326—A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

HOONAH PACKING COMPANY, a Corporation,  
Defendant.

**Demurrer.**

Comes now defendants by its attorneys, Z. R. Cheney and A. H. Ziegler, and demurs to the plaintiff's complaint upon the following grounds:

I.

That the Court has no jurisdiction of the subject of the action.

II.

That the complaint does not state facts sufficient to constitute a cause of action, for that the act of the Alaska legislature, approved April 29th, 1915, entitled, "An act to establish a system of taxation, create revenue and provide for collection thereof, for the Territory of Alaska, and for other purposes," and to amend an act, entitled, "An act to establish a system of taxation, create revenue and provide for collection thereof, for the Territory of Alaska, and for other purposes," approved May 1st, 1913, and declaring an emergency, is unconstitutional and void, for the reason that same is contrary to the provisions of the Organic Act for the Territory of Alaska, entitled, "An act to create a legislative

assembly in the Territory of Alaska, to confer legislative power thereon, and for other purposes." Approved August 24th, 1912.

Z. R. CHENEY and  
A. H. ZIEGLER,  
Attorneys for Defendants.

Copy received and service admitted this 17th day of July, 1915.

J. H. COBB,  
Attorney for Plaintiff.

Filed in the District Court, District of Alaska, First Division. Jul. 21, 1915. J. W. Bell, Clerk. By John T. Reed, Deputy. [4]

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*In the District Court for the District of Alaska, Division No. One, at Juneau.*

No. 1325-A.

THE TERRITORY OF ALASKA,  
Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,  
Defendant.

No. 1326-A.

THE TERRITORY OF ALASKA,  
Plaintiff,

vs.

HOONAH PACKING COMPANY, a Corporation,  
Defendant.

**Memorandum Opinion [on Demurrer]. [5]**

By act approved April 29, 1915, the Legislature of Alaska provided as follows:

“Section 1. That any person, firm or corporation prosecuting or attempting to prosecute any of the following lines of business in the Territory of Alaska, shall apply for and obtain a license and pay for said license, for the respective lines of business as follows:

- .....
- 8. Fish-traps, fixed or floating, \$100.00 per annum. So-called dummy traps included.”
- .....

It also provides in Section 2 that

“Every person, firm or corporation desiring to engage in any of the lines of business specified in section 1, shall first apply to and obtain from the territorial treasurer a license. If the tax for the license applied for is a fixed sum, the amount of such license tax shall accompany the application.”

Said Section 2 further provided for the bringing of a suit, either civil or criminal, to collect the license, and section 4 of the said act provided:

“Special remedies provided by this act . . . shall not be deemed exclusive, and any appropriate remedy, either civil or criminal or both, may be revoked by the Territory in the collection of all taxes; and in civil actions the same penalties may be collected as are herein provided in criminal actions.”

Under the provisions of this act of the legislature, the Territory of Alaska brought suit against the defendant, alleging in the complaint:

“That during the month of June, 1915, and continuously up to the present time the defendant was engaged in and prosecuting and attempting to prosecute the business of fishing by means of fish-traps situate in the waters of Alaska, and that it has failed, neglected and refused to pay the license tax, or any part thereof, provided for by said act of the legislature. Wherefore the Territory asks for judgment for the amount of the license tax due.”

To this a demurrer has been interposed, on the ground that the said complaint does not state facts sufficient to constitute a cause of action, and in support of the demurrer the point is raised that the legislature had no power to impose such a tax, for the reasons—

1. Congress has reserved to itself the exclusive control of the fish and game of Alaska. [6]

2. The said tax is in violation of section 9 of the Organic Act of the Territory (Act of June 26, 1906 aforesaid), which provides:

“All taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessment shall be according to the actual value thereof.”

As to the first point raised in support of the demurrer, to wit: “Congress has reserved to itself the exclusive control of the fish and game of Alaska”; it is urged that by the act approved June 26, 1906, (34 Stat. L. 478), Congress provided:

“That every person, company or corporation carrying on the business of canning, curing or preserving fish, or manufacturing fish products within the Territory known as Alaska . . . shall, in lieu of all other license fees and taxes therefor and thereon, pay a license tax on their said business and output as follows:

- Canned Salmon, 4¢ per case;
- Pickled Salmon, 10¢ per barrel;
- Salt Salmon in bulk, 5¢ per 100 pounds;
- Fish Oil, 10¢ per barrel;
- Fertilizer, 20¢ per ton”;

and that the Organic Act of the Territory, passed six years after the act of 1906, and which provides:

“that the power of the legislature should not extend to the fish laws . . . or to the laws of the United States providing for taxes on business and trade; provided, further, that this provision shall not operate to prevent the legislature from imposing other and additional taxes or licenses” (C. L. 1913, Sec. 421)

should be taken to mean that the legislature is not prohibited from imposing other and additional licenses or taxes “on other kinds of industries and on other kinds of business or trade not covered by the act of 1906.”

The reasoning advanced why the Court should so hold is not convincing—on the contrary, as the Organic Act is the latest expression of the legislative will on the subject, it would seem that it must be taken as repealing that part of the former act which is in conflict therewith, to wit: “shall, in lieu of all



other license fees and taxes." For the Court to hold that the later act does not repeal the former act to the extent indicated, it would be compelled to read into the later act some words which [7] are not there, to wit: "On other kinds of industries and on other kinds of business or trade not covered by the act of 1906." This would not be justified by any canon of construction. The very position of the proviso in the statute shows what Congress had in mind, to wit, that in imposing other and additional licenses or taxes the legislature should not be fettered by anything contained in the act of 1906. It is not apparent that there is any need of construction, for the language is plain and unambiguous. A reference to the debates in Congress when the bill was before it would clear up any ambiguity if, indeed, any such existed.

The bill came up for argument on Wednesday, the 24th of April, 1912. In its original form the proviso was as follows:

"That the authority herein granted to the legislature to alter, amend, modify and repeal laws in force in Alaska shall not extend to the customs, internal revenue, postal or other general laws of the United States";

and nothing was there said about the game or the fish. Whereupon the following occurred:

Mr. WILLIS.—Mr. Chairman, I offer the following amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

Line 9, page 23, after the word "States," insert

the words "or to the game laws of the United States applicable to Alaska."

Mr. MANN.—Why not make it game and fish laws?

Mr. WICKERSHAM.—Mr. Chairman, I think the fish laws ought to be left alone.

Mr. MANN.—Why not make it game and fish laws, so that they cannot repeal the fish laws? They can pass new fish laws.

Mr. WILLIS.—Mr. Chairman, I will accept that amendment, and ask unanimous consent that it be so modified and reported as modified.

The CHAIRMAN. — Without objection, the amendment will be so modified, and the clerk will report the amendment as modified.

The Clerk read as follows:

Line 9, page 23, after the word "States" insert the words "or to the game and fish laws of the United States applicable to Alaska."

Mr. WICKERSHAM.—Mr. Chairman, I do not think that the word "fish" ought to be in there. I think the fisheries in Alaska need protection. They belong to the people of the State or to the Territory, and they do not belong to the Government of the United States. They are not now being protected. They are not now being conserved, and if this legislature will do something toward conserving and protecting the fish it ought to be allowed to do it. This simply bars the legislature from protecting the fisheries in that Territory, and it ought not to be in the bill. [8]

Mr. MANN.—The gentleman will notice this pro-



vision does not apply to passing laws, but only to the repealing of laws.

Mr. WILLIS.—It seems to me the observation of the gentleman from Illinois answers the objection of the gentleman from Alaska. It simply provides, if it shall be adopted, that the legislature of the Territory of Alaska shall not have the power to alter, amend or repeal the United States fish or game laws now in force in the Territory. It does not take away from the legislature the power to pass additional laws of that character. It seems to me that meets the objection.

Mr. WICKERSHAM.—I think they ought to be allowed to amend them.

Mr. WILLIS.—We have a Federal fish law in Alaska. The gentleman is not objecting to that.

Mr. WICKERSHAM.—No.

Mr. WILLIS.—That is all this amendment provides—that the legislature shall not have the power to amend the present fish or game laws.

Mr. WICKERSHAM.—What does that mean?

Mr. WILLIS.—It means that the present law shall stand.

Mr. FLOOD of Virginia. Suppose Congress passes a law revising and extending the fish laws there?

Mr. WILLIS.—Well, undoubtedly that will be the paramount law of Alaska.

Mr. FLOOD of Virginia. What will be the effect of the gentleman's amendment?

Mr. WILLIS.—The effect of this amendment will be, as I understand it, simply to take away from the

legislature of Alaska the power to amend the fish or game laws now in effect in Alaska.

Mr. FLOOD of Virginia. It would not have the effect to take away from the legislature of Alaska the power to amend the fish laws we hereafter pass.

Mr. WILLIS.—No; I do not think it would, as I have worded it, although I did not have that in mind when I drafted the amendment.

Mr. MANN.—They would not have that power.

Mr. WILLIS.—They would not have that power now.

Mr. FLOOD of Virginia. The gentleman is aware of the fact there is a proposition to revise the fish laws?

Mr. WILLIS.—Yes; I think the bill is a good one and ought to pass.

Mr. FLOOD of Virginia. And will in all probability become the law.

Mr. WILLIS.—It seems to me this meets the objection that has been raised in a perfectly fair manner, and I think it is a fair objection, but I do not believe the legislature ought to repeal the present game or fish laws.

Mr. MANN.—We have endeavored to provide in a way for the conservation of the fisheries and game up there. We ought not to permit those laws to be repealed, but if they want to make them more stringent, and probably do, they ought to have that right.

Mr. FLOOD of Virginia. I do not think the amendment means anything, but if it will please anybody to put it in, why, let it go.

Mr. WICKERSHAM.—I shall withdraw my objection.

The question was taken, and the amendment was agreed to.

(Vol. 48, Part 6, page 5288, Congressional Record, 62d Congress, Second Session.)

This, however, did not seem to be specific enough for the Senate, for when the bill reached that body it was amended by having added to it this provision:  
[9]

“Provided further that this provision shall not operate to prevent the legislature from imposing other and additional taxes and licenses.”

The House refused to agree to this and to several other amendments, and the committee on conference of the House reported, recommending that the House recede from its disagreement to this Senate amendment. The House did recede from said disagreement, and the Senate proviso was added to the bill.

This occurred on August 20, 1912, and the record of it is found in said Congressional Record at page

Thus it will be seen—

1. That there is on the face of the bill no expression of any such purpose as is contended for.

2. That no such purpose as is contended for was in the minds of the legislators when the bill passed, but on the contrary what was in their minds was that the legislature should have the power to levy additional taxes on the fish and the game business and on other businesses.

As to the second point raised in support of the de-

murrer, to wit: "The said tax is in violation of section 9 of the Organic Act of the Territory";

A reference to the legislation and to one Supreme Court decision on the subject of the taxation of the fisheries business in Alaska may throw some light on the subject.

By the criminal code of Alaska, adopted March 3, 1899 (C. L. 1913, Sec. 2569), Congress provided:

"That any person or persons, corporation or company prosecuting or attempting to prosecute any of the following lines of business, within the District of Alaska shall first apply for and obtain a license so to do from a District Court or a subdivision thereof in said district, and pay for said license for the respective lines of business and trade as follows, to wit: . . .

Fisheries: Salmon Canneries, 4¢ per case;  
 Salmon Salteries, 10¢ per barrel;  
 Fish Oil Works, 10¢ per barrel;  
 Fertilizer Works, 20¢ per ton."

The point was raised that this act was in violation of section 8, article 1 of the constitution of the United States, [10] which reads:

"The Congress shall have power to lay and collect taxes, duties, imposts and excises, . . . but all duties, imposts and excises shall be uniform throughout the United States";

and that said act, insomuch as it directed the money to be paid into the treasury of the United States could not be sustained. The point was passed upon in the case of *Binns v. United States* (194 U. S. 486,

decided May 31, 1904), and Justice Brewer, at page 491 says:

“We shall assume that the purpose of the license fees required by section 460 is the collection of revenue, and that the license fees are excises within the constitutional sense of the terms. Nevertheless we are of the opinion that they are to be regarded as local taxes imposed for the purpose of raising funds to support the administration of local government in Alaska.

It must be remembered that Congress, in the government of the Territories as well as of the District of Columbia, has plenary power, save as controlled by the provisions of the Constitution, that the form of government it shall establish is not prescribed, and may not necessarily be the same in all the Territories. We are accustomed to that generally adopted for the Territories, of a *quasi* State Government, with executive, legislative and judicial officers, and a legislature endowed with the power of local taxation and local expenditures, but Congress is not limited to this form. In the District of Columbia it has adopted a different mode of government, and in Alaska still another. It may legislate directly in respect to the local affairs of a Territory or transfer the power of such legislation to a legislature elected by the citizens of the Territory. It has provided in the District of Columbia for a board of three commissioners, who are the controlling officers of the district. It may entrust to them a large volume of legis-



lative power, or it may by direct legislation create the whole body of statutory law applicable thereto. For Alaska, Congress has established a government of a different form. It has provided no legislative body but only executive and judicial officers. It has enacted a penal and civil code. Having created no legislative body and provided for no local legislation in respect to the matter of revenue, it has established a revenue system of its own, applicable alone to that Territory. Instead of raising revenue by direct taxation upon property, it has, as it may rightfully do, provided for that revenue by means of license taxes.”

And later on in the decision the learned Justice quotes the following from volume 32 Congressional Record, part 3, page 2235, to wit:

“ ‘The committee on Territories have thoroughly investigated the condition of affairs in Alaska and have prepared certain licenses which in their judgment will create a revenue sufficient to defray all the expenses of the government of the [11] Territory of Alaska. . . . They are licenses peculiar to the condition of affairs in the Territory of Alaska on certain lines of goods, articles of commerce, etc., which, in the judgment of the committee, should bear a license, inasmuch as there is no taxation whatever in Alaska. Not one dollar of taxes is raised on any kind of property there. It is therefore necessary to raise revenue of some kind, and in the judgment of the Committee on

Territories, after consultation with prominent citizens of the Territory of Alaska, including the Governor and several other officers, this code or list of licenses was prepared by the committee. It was prepared largely upon their suggestions and upon the information of the committee derived from conversing with them.'

While, of course, it would have simplified the matter and removed all doubt if the statute had provided that those taxes be paid directly to some local treasurer and by him disbursed in payment of territorial expenses, yet it seems to us it would be sacrificing substance to form to hold that the method pursued when the intent of Congress is obvious, is sufficient to invalidate the taxes.

In order to avoid any misapprehension we may add that this opinion must not be extended to any case, if one should arise, in which it is apparent that Congress is, by some special system of license taxes, seeking to obtain from a Territory of the United States revenue for the benefit of the nation as distinguished from that necessary for the support of the territorial government."

Thus it will be seen that the license was declared to be a tax and was sustained as not being in contravention of the said article of the Constitution, on account of the fact that the money, although to be paid into the treasury of the United States, was to be used for the support of the Territory—in other words, that it was a tax imposed on businesses in

Alaska by Congress, the then legislative body for Alaska, for local purposes.

Then came the acts of Congress of March 30, 1906, and of March 24, 1912, *supra*.

Such being the state of Federal legislation on the subject of taxing the fishing industry in Alaska, the legislature of Alaska passed the act whose validity is here assailed.

We have seen by the Binns case that Congress when imposing a license tax system on businesses in Alaska, was not fettered by the constitutional prohibition as to uniformity. It must be conceded that Congress had plenary power over the Territory—That is, that it could legislate on all rightful subjects of legislation not prohibited by the national constitution. This power it [12] had, not so much from its constitutional power to make rules and regulations for the Government of the Territory, as from its inherent power arising from the ownership of the *res*. Having this power, Congress certainly had the power to confer it upon the legislature. It is true that the powers of that legislature are limited by the act defining those powers and that in this respect a territorial legislature differs from State legislatures; that is to say, the Organic Act of a Territory if a grant of specific powers and not a reservation of specific powers.

Congress, when implanting this new jurisdiction in Alaska, expressly provided that the power of the Alaska legislature

“shall extend to all rightful subjects of legislation not inconsistent with the laws of the



United States, but it shall not, etc.,” then follow exceptions too numerous to mention,—more than have obtained in the case of any other territory,—well nigh emasculating the original grant, and causing it to “speak the word of promise to the ear and break it to the hope.” However, of its pristine vigor there is left enough to justify the imposition of license taxes and property taxes. Such power finds its warrant in the principle that unless a power is forbidden to our Legislature the latter possesses the power—“provided it be a rightful subject of legislation.” That is to say, Congress, ordaining for this Territory an Organic Act, does a thing for the Territory which in its nature but not in its extent, is similar, analogous, to what the people of a state do when they adopt a constitution for the State.

“The legislative power to be exercised by the territorial legislature is the legislative power of the territory, not that of the United States. Both states and territories, in a certain sense, derive their existence from the legislation of Congress, but the jurisdiction and authority exercised, either by a state or territory, is that of a state or territory, and not that of Congress. Territorial statutes have a distinct and well-defined character of their own. The people of a territory, when authorized to form a territorial government, are vested with a qualified sovereignty. Congress may limit their powers, and may annul their enactments, but, subject to these limitations, the territory is a government.

Its laws, [13] unless set aside by Congress or the courts, are the laws of the territory; they are not laws of the United States, within the ordinary meaning of those terms; certainly not in the sense that the acts of Congress, approved by the president, are laws of the United States." (16 Fed. 715.)

This being true, the inquiries are these:

(a) When the legislature imposed this license tax, was it exercising power over a rightful subject of legislation? If it was not so exercising power, the enactment must fall; if, however, it was so exercising power, the enactment must stand, unless it violates some other provision of the constitution, (Organic Act.)

That the power to raise revenue by levying a license tax on business pursuits is "a rightful subject of legislation" will hardly be denied.

25 Cyc. p. 599, Sec. 3, and cases cited in Note 16.

(b) Pursuing the argument, then: Such power, being a rightful subject of legislation, exists in the legislature of this Territory unless there is some provision in the Organic Act which negatives the power. If there is any such provision, where is it to be found?

Counsel for defendant affects to find it in that provision of the Organic Act which declares that "all taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and assessments shall be according to the value thereof. No taxes shall be levied for Territorial purposes in excess of one per centum upon the

assessed valuation of property therein any one year.”

If this uniformity requirement applied to anything except direct property taxes the argument might prevail—but that in fact it does apply exclusively to direct property taxes and to nothing else has been decided so often as to be beyond cavil.

25 Cyc. p. 605–6, and cases cited.

“The constitutions of many of the states contain the requirement that taxation shall be equal and uniform, that all property [14] in the state shall be taxed in proportion to its value, that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, or that the legislature shall provide for an equal and uniform rate of assessment and taxation; and in the face of such provisions a tax law which violates the prescribed rule of equality and uniformity is invalid, although there is sufficient difference in the wording of the different provisions to account for some lack of uniformity in the decisions as to what constitutes a violation of their requirements. The requirement does not apply to every species of taxation, and does not restrict the legislature to the levying of taxes upon property alone. The restriction relates only to the rate or amount of taxation and its incidence upon taxable persons and property, and does not limit the legislature in regulating the mode of levying and collecting the taxes imposed, and it also relates only to property within

the state, and neither the statutes of another state nor the action of its taxing officers can affect the question. In the absence of such a constitutional requirement it is not essential to the validity of taxation that it shall be equal and uniform, and in such a case a tax law cannot be declared unconstitutional merely because it operates unequally, unjustly, or oppressively.

The requirement of equality and uniformity applies only to taxes in the proper sense of the word, levied with the object of raising revenue for general purposes, and not to such as are of an extraordinary and exceptional kind, or to local assessments for improvements levied upon property specially benefited thereby, or to other burdens, charges, or impositions which are not properly speaking taxes; and further, such a constitutional provision is to be restricted to taxes on property, as distinguished from such as are levied on occupations, business, or franchises, and on inheritances and successions, and as distinguished also from exactions imposed in the exercise of the police power rather than that of taxation.

The principle of equality and uniformity does not require the equal taxation of all occupations or pursuits, nor prevent the legislature from taxing some kinds of business while leaving others exempt, or from classifying the various forms of business, but only that the burdens of taxation shall be imposed equally upon all persons pursuing the same avocation, or that if

those following the same calling are divided into classes for the purposes of taxation, the basis of classification shall be reasonable and founded on a real distinction, and not merely arbitrary or capricious. To this extent, also, and no further, the principle applies to license fees or taxes imposed under the police power or for the better regulation of occupations supposed to have an important public aspect.”

(37 Cyc., p. 729-33.)

It is urged that the legislature has only such powers of taxation as is conferred by section 9 of the Organic Act. But this is a mistake. It is true that that section expresses the limit of its powers as to direct property taxation, but it is elsewhere granted the express power to raise revenue by license taxes (C. L. 1913, S. 410), and as a matter of fact that is the only method of taxation which the legislature has adopted.

[15]

It is said that the system of taxation adopted is the exercise of special and not general legislation. This position is untenable. See *Codlin v. Kohlhansen*, 58 P. R. 499.

It is said that there has been no assessment, but

“The cardinal rule in taxation that whenever a tax is to be fixed by assessment the due assessment must precede any valid claim of such tax does not apply to license taxes, except where the statute expressly so provides, or where the tax is according to value, or depends upon the ascertainment of person or value by some designated official.”

(25 Cyc., p. 628.)



It is said that the fact that a lien on the property is reserved for the taxes shows that this is a property tax, but

“In order to accomplish the certain collection of license taxes, the statute may declare that such taxes shall be a lien on the property assessed and entitled to be paid in preference to all mortgages and incumbrances.”

(Cyc., p. 628.)

It is said there is no such business or line of business as fish-traps and that that fact, together with the fact that dummy traps are included is proof positive that this is a property tax pure and simply—a tax on the *res* and not on the business. A dummy trap is a sham trap not used for fishing, but designed simply to squat on and hold a trap location. None of the traps in question are dummy traps. The complaint seeks to recover the license tax from “fishing” traps, and if the tax on them is valid, it would not matter that the tax on dummy traps is invalid.

It is true there is no such business or line of business as fish-traps, but this is a mere “inaptitude of expression,”—The meaning is plain when the language is read in connection with that knowledge of the fishing business (one of the main enterprises of Alaska) common to all our people and of which the legislature will not be considered ignorant and of which the Court will take judicial notice. The legislature meant that whoever conducts the business of fishing by means of fish-traps must pay the license required by law. Although taxation statutes are to [16] be strictly construed

against the taxing power, yet they are to be construed to mean something, if possible, and are not to have their vitality frittered away by technical refinements.

Cyc.

The demurrer in each case will be overruled.

ROBERT W. JENNINGS,

Judge.

Filed in the District Court, District of Alaska, First Division. Aug. 11, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy.

[Endorsed]: No. 1326-A. In the United States District Court for the District of Alaska, Division No. One. The Territory of Alaska, Plaintiff vs. Hoonah Packing Co., a Corporation, Defendant.

[17]

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*In the District Court for Alaska, Division Number One, at Juneau.*

No. 1326-A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

HOONAH PACKING CO., a Corporation,

Defendant.

**Order Overruling Demurrer.**

This cause came on regularly to be heard upon the demurrer of the defendant to the plaintiff's complaint. Messrs. Hellenthal & Hellenthal and Mr. Z. R. Cheney, appearing for said demurrer, and Mr.

Cobb, *contra*, and the Court having heard said demurrer, and the argument of counsel thereon, and being fully advised in the premises, finds the law for the plaintiff.

It is therefore considered by the Court, and it is so ordered, adjudged and decreed, that said demurrer be and the same is hereby in all things overruled; and upon application of counsel for defendants fifteen days are allowed within which to answer.

Dated August 11th, 1915.

ROBERT W. JENNINGS,  
Judge.

Entered Court Journal No. L, page 58.

Filed in the District Court, District of Alaska, First Division. Aug. 11, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [18]

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*In the District Court for the District of Alaska,  
Division Number One, at Juneau.*

Case No. 1326-A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

HOONAH PACKING COMPANY, a Corporation,  
Defendant.

**Amended Answer.**

Comes now the defendant and for answer to the complaint of the plaintiff herein, admits, denies and alleges as follows:

I.

The defendant admits that it is a corporation duly



incorporated and owning property in the Territory of Alaska, and engaged in the fishing business in said Territory, as said fish business is hereinafter more particularly described.

## II.

Defendant denies that during the month of June, 1915, or at any other time, it was engaged in prosecuting, or attempting to prosecute, the business of fishing by means or fish-traps, situate in the waters of Alaska or elsewhere, except as hereinafter stated and in this connection the defendant avers:

That it is the owner of a salmon cannery, situate near Hoonah in Southeastern Alaska, and that it is engaged in catching, packing and canning salmon; that in connection with the operation of such cannery it catches, packs, cans and ships salmon; that it is the owner of eleven (11) fish-traps, situate [19] in the waters of Southeastern Alaska, and that each and all of said fish-traps are appliances used by it in connection with its operation of said cannery and that said traps and all of them are part of the cannery property used exclusively for the purpose of catching fish to be canned in the defendant's said cannery.

That the defendant is not engaged in the business of operating fish-traps, or in the business of fishing by means of fish-traps; that it does not sell the fish caught in any of its said traps until the same have been canned at its said cannery and makes no use whatsoever of said fish-traps, except in the operation of its said cannery.

That it has complied with all the provisions of chapter three, title seven of the Compiled Laws of

Alaska, relating to fish and fisheries, including the provisions of sections 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275 and 275-A, and has paid license taxes on its business and output as by said act of Congress required, and has in all respects complied therewith; that the taxes and licenses have been so paid by defendant and accepted by the United States in lieu of all other license fees and taxes on their said business and output.

### III.

Answering paragraph number three of plaintiff's complaint, defendant denies that by an act of the Alaska legislature, approved April 29, 1915, entitled "An act to establish a system of taxation, create revenue, and provide for collection thereof, for the Territory of Alaska, and for other purposes," approved May 1, 1913, and declaring an [20] emergency," a tax of one hundred dollars (\$100) was imposed upon each and every fish-trap, which said tax, by the terms of said act, became due and payable on the 1st day of July, 1915.

Further answering said paragraph, defendant alleges that on April 30, 1915, the persons who composed the membership of the Alaska territorial legislature, met in the Legislative Assembly Hall at Juneau, Alaska, and then and there acting unlawfully and without authority so to do, attempted and pretended as pass an act imposing a tax of one hundred dollars (\$100) upon each and every fish-trap in the Territory of Alaska, which said act is the act mentioned and set forth in paragraph number

three of the plaintiff's complaint, and which plaintiff alleges was passed on April 29th 1915.

That at the time of the attempted passage of said act by the persons above mentioned, the regular session of the legislative assembly, beginning March 1, 1915, had long since expired; that said legislative assembly had been in continuous session for more than sixty (60) days prior to April 30th, 1915, and said assembly had not been called or convened in extraordinary session by a proclamation of the Governor of the Territory, as provided by section six of the Organic Act of the Territory of Alaska, entitled, "An act to create a legislative assembly in the Territory of Alaska, to confer legislative power thereon and for other purposes." [21]

Further answering said paragraph, defendant alleges that said act so attempted to be passed as aforesaid is invalid for that it alters, amends, modifies and repeals the fish laws passed by the Congress of the United States prior to the adoption of the Organic Act and in force at the time said act was adopted all of which is contrary to the provisions of section three of said Organic Act.

Further answering said paragraph, defendant alleges that the purported license tax sought to be collected in this action is not a license but a tax and is sought to be collected in violation of the provisions of the Organic Act of the Territory of Alaska in this that the act is a revenue measure pure and simple, and that the licenses sought to be collected are not sought to be collected for the purpose of regulation, but for the purpose of taxation only;

that the amount imposed is far in excess of the amount required to issue the license, to regulate and inspect the thing sought to be licensed and to do such other things as might be done by the Territory under its police powers; and that the express object of the act is not regulation but taxation, and as such is in violation of the provisions of the Organic Act, which requires, "that all taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessment shall be according to the actual value thereof. No taxes shall be levied for territorial purposes in excess of one per centum upon the assessed valuation of property within the Territory in any one year." [22]

That the tax attempted to be imposed upon fish-traps in the Territory is not assessed according to the actual value of said fish-traps is levied without reference as to whether it is in excess of one per centum upon the assessed valuation of the property and without any assessment whatsoever having been made prior to the commencement of this action; that said tax of one hundred dollars (\$100) exceeds one per centum upon the actual value of the traps taxed; that the act under which said taxes are assessed is contrary to the provisions of the act of Congress of July 30, 1886, for the reason that the same is a local or special law instead of a general law.

Answering paragraph number four of plaintiff's complaint defendant admits that during the months of June and July 1915, it has operated eleven (11)

fish-traps described in the complaint in the manner above set forth in paragraph two of this answer, and that it has failed, neglected, and refused to pay said tax or any part thereof, but defendant denies all and singular the remaining allegations in said paragraph contained.

WHEREFORE, defendant prays that plaintiff take nothing by its action, and that defendant recover its costs and disbursements herein expended.

Z. R. CHENEY,

Attorney for Defendant. [23]

United States of America,  
Territory of Alaska,—ss.

Z. R. Cheney, being first duly sworn, on oath deposes and says:

I am the attorney for the defendant in the above-entitled action, have read the foregoing answer, know the contents thereof, and the same is true as I verily believe.

Z. R. CHENEY,

Subscribed and sworn to before me this 23d day of September, A. D. 1915.

[Notarial Seal]

A. H. ZIEGLER,

Notary Public in and for the Territory of Alaska.

My commission expires July 3, 1917.

Due service of the within Amended Answer is hereby admitted this 24th day of September A. D. 1915.

J. H. COBB,

Attorney for plaintiff.



Filed in the District Court, District of Alaska, First Division, Sep. 25, 1915. J. W. Bell, Clerk. By John T. Reed, Deputy. [24]

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*In the District Court for Alaska, Division Number One, at Juneau.*

No. 1326-A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

HOONAH PACKING COMPANY, a Corporation,  
Defendant.

**Demurrer to Amended Answer.**

Now comes the plaintiff, by J. H. Cobb, Chief Counsel for the Territory of Alaska, and demurs to the amended answer of the defendant, and alleges that the same constitutes no defense to the plaintiff's complaint in this:

1st. That the denial contained in paragraph II of said amended answer as limited and explained is merely a denial that defendant sells the fish taken in the traps it is operating, but instead cans the same in its own canneries.

2d. It affirmatively appears from said amended answer that defendant did operate the eleven traps mentioned in the complaint and took fish therein.

3d. The affirmative facts plead as a defense to said complaint do not in law constitute any defense to the same.

Of all of which plaintiff prays judgment of the Court.

J. H. COBB,

Chief Counsel for the Territory of Alaska.

Filed in the District Court, District of Alaska, First Division. Sep. 25, 1915. J. W. Bell, Clerk. By John T. Reed, Deputy. [25]

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[Order Overruling Demurrer to Amended Answer.]

No. 1326-A.

THE TERRITORY OF ALASKA,

vs.

HOONAH PACKING COMPANY.

[Overruling Demurrer to Amended Answer].

The demurrer of plaintiff to the amended answer is overruled.

Filed in the District Court, District of Alaska, First Division. Nov. 1, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [26]

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*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

No. 1326-A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

HOONAH PACKING CO., a Corporation,

Defendant.

**Reply to Amended Answer.**

Now comes the Territory of Alaska by its chief counsel and for reply to the amended answer of the defendant alleges:

## I.

Referring to paragraph 3, it admits that the defendant, during the months of June and July operated eleven fish-traps described in the complaint in the manner set forth in paragraph 2 of said answer, and further admits that the defendant has failed, neglected and refused to pay the said tax or any part thereof, but it denies all and singular the other remaining allegations in said paragraph contained.

J. H. COBB,  
Chief Counsel.

United States of America,  
Territory of Alaska,—ss.

J. H. Cobb being first duly sworn, deposes and says: I am the chief counsel for the Territory of Alaska. The matters and things set forth in the above and foregoing reply are true as I verily believe.

J. H. COBB.

Subscribed and sworn to before me this 4th day of November, 1915.

[Notarial Seal]

E. L. COBB,  
Notary Public in and for Alaska.

My commission expires Dec. 3, 1918.



Service of the above and foregoing reply admitted this the 4th day of November, 1915.

CHENEY & ZIEGLER,

By R. E. P.

Attorney for Defendant.

Filed in the District Court, District of Alaska, First Division. Nov. 6, 1915. J. W. Bell, Clerk. By L. E. Spray, Deputy. [27]

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*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1326-A

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

HOONAH PACKING COMPANY, a Corporation.  
Defendant.

**Stipulation [of Facts].**

It is hereby stipulated and agreed by and between the plaintiff and defendant, by their respective counsel, that this case shall be tried upon the following agreed facts:

I.

The defendant, Hoonah Packing Company, is a corporation duly incorporated and owing property and doing business in the Territory of Alaska.

II.

The said defendant is the owner of 11 fish-traps situate within the waters of Southeastern Alaska, which said traps and each and all of them *it* operated

during the fish season of 1915 to wit, during the months of June, July and August, taking fish therein.

### III.

That none of the fish taken by the defendant in any one its said fish-traps operated by it as aforesaid, was sold by the defendant prior to being canned, but all the fish so caught were utilized by the defendant in connection with the operation of certain canning plants also owned by it [28] in which said fish were canned and thereafter sold as canned salmon, and the defendant has not otherwise engaged in the fish-trap business.

### IV.

The defendant has complied with all the provisions of chapter 3, title 7, of the Compiled Laws of the Territory of Alaska, relating to fish and fisheries, including the provisions of Sections 259 to 275-A, inclusive; also with all rules and regulations, respecting salmon fisheries in Alaska, made and established by the Secretary of Commerce & Labor, pursuant to section 269 of said act, and has paid the license tax provided for by said act.

### V.

That no assessment has ever been made by the plaintiff, its officers, agents or employees, upon all or any one of the 11 fish-traps described in the complaint.

### VI.

That the Territory of Alaska has passed no law providing for the inspection, regulation of fish-traps in Alaskan Waters, with the exception of the act of April 29, 1915, under which act this suit is brought.

## VII.

Some of the 11 traps belonging to the defendant, upon which this tax is claimed to be due, are worth upwards of \$10,000, and some are worth not to exceed \$1,000.

## VIII.

The second session of the legislature which passed the act which forms the basis of this action, to wit, chapter 76, Session Laws of Alaska, 1915, convened on the 1st [29] day of March, 1915, at 12 o'clock noon; that on the 29th day of April, 1915, said legislature adjourned, *sine die*, at 12 o'clock midnight, according to the official time-pieces of said legislature, that is to say, the clocks hanging in the halls of the two houses of the legislature were stopped or turned back by the sergeant-at-arms just prior to the hour of 12 o'clock of April 29, 1915, and thereafter between the hours of 3 and 4 o'clock A. M., sun time, of April 30, 1915, while the clocks in said halls of the legislature still indicated prior to midnight being stopped or turned back as aforesaid, the said act, namely chapter 76 of the Session Laws of Alaska, 1915, was finally passed by both Houses of the legislature and approved by the Governor; and was enrolled and filed in the office of the Secretary of the State for the Territory as it now appears in the printed volume of the Session Laws of Alaska, 1915, chapter 76; that the Governor of the Territory of Alaska did not call an extra session to pass said act.

## IX.

It is further stipulated that a real controversy

in good faith exists between the Territory and the defendant as to the meaning, scope and validity of chapter 76 of the Session Laws of 1915, approved April 29, 1915, and this agreement and stipulation as to the facts is made for the purpose of settling such controversy without the necessity, trouble and expense of introducing evidence; that the Territory waives all claim for penalties provided in said Law, and [30] asks judgment only for the amount of the tax, and legal interest from July 1, 1915.

It is agreed that this case shall be tried upon the record, including the complaint, answer, reply and this stipulation.

It is further agreed that the foregoing stipulation of facts are subject to objection from either party as to their incompetency, irrelevancy or immateriality the same as might be raised on the trial to evidence tending to prove such facts.

It is further stipulated that the parties hereto make the following legal contentions:

First. It is contended by the plaintiff that the said chapter 76 of the Session Laws of 1915 is a valid law, and that thereunder the plaintiff is entitled to have and recover of and from the defendant the sum of \$1,100, with interest at 8% thereon from and after July 1, 1915;

It is contended on the part of the defendant that it is not indebted to the plaintiff in any sum whatsoever, for the reasons (1) that it does not come within the provisions of chapter 76 of the Session Laws of 1915; and (2) because the said last mentioned act and especially those provisions relied upon as the basis of

this action is and are void and invalid for the following reasons, viz.:

(a) Because that portion of the act of April 29, 1915, imposing a tax of \$100 on each fish-trap in Alaska, is in violation of the provisions contained in [31] sections 3 and 9 of the act of Congress, approved August 24, 1912, known as the Organic Act of Alaska.

(b) The legislature is limited in its grant of power from Congress to provide for the assessment, levying and collection of taxes in Alaska, and power to act beyond the grant is not an attribute of sovereignty in a territory.

(c) All taxation of real and personal property in Alaska, under laws passed by the legislature for the purpose of raising revenue for territorial purposes under the name of taxes, excises, licenses or any other name, must be imposed according to the actual value of the property taxed.

(d) That the act in question is void for the reason that it was passed after midnight of April 29, 1915.

J. H. COBB,

Chief Counsel for the Territory of Alaska.

CHENEY & ZIEGLER,

Attorneys for Defendant.

Filed in the District Court, District of Alaska, First Division. Nov. 20, 1915. J. W. Bell, Clerk.

By \_\_\_\_\_, Deputy. [32]

*In the District Court for the District of Alaska,  
Division No. One, at Juneau.*

No. 1326-A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

HOONAH PACKING COMPANY, a Corporation,  
Defendant.

**Amendment to Stipulation [of Facts].**

The parties hereto agree that the stipulation heretofore filed herein and on which this case is to be tried shall be, and the same is hereby, amended by adding thereto the following clause:

“If the Court shall find, under the law, that judgment should go for plaintiff, said judgment shall be for the sum of \$1,100, with interest thereon from July 1, 1915; from which judgment a writ of error or appeal may be prosecuted as provided by law.”

Dated this 20th day of November, 1915.

J. H. COBB,

Attorney for Plaintiff.

CHENEY & ZIEGLER,

Attorneys for Defendant.

Filed in the District Court, District of Alaska,  
First Division. Nov. 20, 1915. J. W. Bell, Clerk.  
By John T. Reed, Deputy. [33]



*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

No. 1326-A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

HOONAH PACKING COMPANY, a Corporation,  
Defendant.

**Stipulation [Waiving Trial by Jury].**

It is hereby stipulated by and between the parties hereto by their respective counsel that a jury herein is expressly waived and said cause is to be tried by the Court upon the pleadings and stipulation of facts on file herein.

J. H. COBB,

Chief Counsel for the Territory of Alaska.

Z. R. CHENEY,

Attorney for Defendant.

Filed in the District Court, District of Alaska,  
First Division. Nov. 29, 1915. J. W. Bell, Clerk.  
By \_\_\_\_\_, Deputy. [34]

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*In the District Court for the District of Alaska,  
Division No. One, at Juneau.*

No. 1325-A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

ALASKA PACIFIC FISHERIES, a Corporation,  
Defendant.

No. 1326-A.

THE TERRITORY OF ALASKA,

Plaintiff,

vs.

HOONAH PACKING COMPANY, a Corporation,  
Defendant.**Opinion.**

In its opinion rendered on the occasion of overruling the demurrer to the complaint in this cause, the Court decided in favor of plaintiff all the questions now presented (at the trial *all* hereof) except

1. The question as to whether or not the term of the legislature had expired when chapter 76, Laws of the Alaska legislature of 1915 was passed;

2. The question as to whether or not the catching of fish to be canned and then sold is "engaging in the fishing business;

and those two questions will now be considered.

(1) The Organic Act (sec. 413, Compiled Laws of Alaska, 1913) provides: [35]

"That the legislature of Alaska shall convene at the capitol at the city of Juneau, Alaska, on the first Monday in March in the year nineteen hundred and thirteen, and on the first Monday in March every two years thereafter; but the said legislature shall not continue in session longer than sixty days in any two years unless again convened in extraordinary session by a proclamation of the Governor."

By the stipulation of facts it appears that the legis-

lature convened on the 1st day of March, 1915, at 12 o'clock noon. By the Organic Act it is not to continue in session longer than 60 days in any two years. By the stipulation it also appears that the act in question "was finally passed by both houses of the legislature and approved by the Governor and was enrolled and filed in the office of the Secretary of State for the Territory as it now appears in the printed volume of the Session Laws of Alaska for 1915—Chapter 76."

Conceding for the sake of the argument only, that that clause of the stipulation does not settle the matter and preclude any further inquiry, this question arises: At what time did the 60 days mentioned in the Organic Act expire?

There seems to be a conflict of authorities as to whether or not Sundays and holidays are to be included in counting the sixty days. The cases of *Cheyney vs. Smith*, 23 P. R. 680 (Ariz.), of *Moog vs. Randolph*, 77 Ala. 608, and some others, hold to the negative: In the dissenting opinion in the Arizona case some authorities holding to the affirmative are collected; and in an opinion dated March 16, 1889, given by Attorney General Miller to the Secretary of the Interior that official distinctly held that Sundays and holidays are to be counted as days of the session; (Vol. 19, p. 259, *Opinions of Attorneys General*); but, however this may be, the Alaska legislature of 1915, convened at noon on the 1st day of March, 1915, and adjourned *sine die* "between 3 and 4 o'clock A. M. (sun time), on April 30, 1915, (see stipulation); so that even counting Sundays and holidays, it did not

continue in session longer than 60 days; for the full period of sixty days did not expire until noon of the 60th day— [36] that is noon of April 30, 1915.

White v. Hinton, 17 L. R. A. 66 (Wyo.).

As to the second question: Defendant contends that the catching of the fish is a mere adjunct of the canning business, without which the latter cannot or does not exist; that it is not engaged in the business of fishing but in the business of canning, and that by act of Congress approved June 26, 1906 (34 Stats. at Large, 478), it was provided that the tax therein prescribed for carrying on the business of canning shall be “in lieu of all other license fees and taxes therefor and thereon.” The argument, if carried out logically, would result in the proposition that Congress itself having said that the tax provided in the act shall be in lieu of all other license fees and taxes, could not by a later law impose for the future a license larger in amount than that which was imposed by the former act, or taxing the different branches or instrumentalities of the canning business. Such a proposition is untenable, for the power of Congress is plenary in the matter. What Congress could do in this matter the territorial legislature can do, for the power of the latter extends to “all rightful subjects of legislation” not forbidden by the Organic Act (Organic Act, Sec. 416), and “except as herein provided, all laws now in force in Alaska shall continue in full force and effect until altered, amended or repealed by Congress or by the legislature” (Organic Act, C. L. 410); and “Provided further: That this provision shall not operate to prevent the legis-

lature from imposing other and additional taxes or licenses." As Congress, then, could provide that all persons catching fish for canning shall pay a certain license tax, and all persons canning the caught fish shall pay an additional license tax, so the legislature, also, may provide the same thing. Now, that is just what the legislature has done by the act in question: It has provided that all persons in the business or line of business of catching fish by means of [37] fish-traps (whether or not they catch the fish for canning purposes) shall pay \$100, and all persons canning the caught fish (whether the fish are caught in traps or nets or seines) shall pay 4 cents per case, etc.—in other words, a license tax for catching and a license tax for canning.

Findings and judgment for plaintiff as per stipulation.

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Judge.

Filed in the District Court, District of Alaska, First Division. Nov. 30, 1915. J. W. Bell, Clerk. By \_\_\_\_\_, Deputy. [38]

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*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

No. 1326-A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

HOONAH PACKING COMPANY, a Corporation,  
Defendant.

### Judgment.

This cause came on regularly for trial upon the complaint, answer and reply; and thereupon came the plaintiff by Mr. J. H. Cobb, and the defendant by Mr. Z. R. Cheney, and all parties announced ready for trial, and filed a stipulation waiving a jury and also filed a stipulation in writing as to the facts herein from which stipulation and the admission in the pleadings, the Court makes the following FINDINGS OF FACT:

#### I.

The defendant, Hoonah Packing Company, is a corporation duly incorporated and owning property and doing business in the Territory of Alaska.

#### II.

The said defendant is the owner of 11 fish-traps situate within the waters of Southeastern Alaska, which said traps and each of them it operated during the fishing season of 1915; during the months of June, July and August, taking fish therein.

#### III.

That none of the fish taken by the defendant [39] in any one of its said fish-traps operated by it as aforesaid, was sold by the defendant prior to being canned, but all the fish so caught were utilized by the defendant in connection with the operation of certain canning plants owned by it in which said fish were canned and thereafter sold as canned salmon, and the defendant has not otherwise engaged in the fish-trap business.



## IV.

The defendant has complied with all the provisions of chapter 3, title 7, of the Compiled Laws of the Territory of Alaska, relating to fish and fisheries, including the provisions of sections 259 to 275-A, inclusive; also with all rules and regulations respecting salmon fisheries in Alaska, made and established by the Secretary of Commerce and Labor, pursuant to section 269 of said act, and has paid the license tax provided for by said act.

## V.

That no assessment has ever been made by the plaintiff, its officers, agents or employees, upon all or any one of the 11 fish-traps described in the complaint.

## VI

That the Territory of Alaska has passed no law providing for the inspection, regulation or taxation of fish-traps in Alaskan waters, with the exception of the act of April 29th, 1915, under which act this suit is brought.

## VII.

Some of the 11 traps belonging to the defendant, upon which this tax is claimed to be due, are worth upwards of \$10,000, and some are worth not to exceed \$1,000. [40]

## VIII.

The second session of the legislature which passed the act which forms the basis of this action, to wit, chapter 76, Session Laws of Alaska 1915, convened on the 1st day of March, 1915, at 12 o'clock noon; that on the 29th day of April, 1915, said legislature

adjourned *sine die*, at 12 o'clock midnight, according to the official time pieces of the said legislature, that is to say the clocks hanging in the halls of the two houses of the legislature were stopped or turned back by the sergeant-at-arms just prior to the hour of 12 o'clock midnight of April 29th, 1915, and thereafter, between the hours of 3 and 4 o'clock A. M., sun time, of April 30th, 1915, while the clocks in said halls of the legislature still indicated prior to midnight, being stopped or turned back as aforesaid, the said act, namely chapter 76, of the Session Laws of Alaska 1915, was finally passed by both Houses of the legislature and approved by the Governor; and was enrolled and filed in the office of the Secretary of State for the Territory as it now appears in the printed volume of the Session Laws of Alaska 1915, chapter 76; that the Governor of the Territory of Alaska did not call an extra session to pass said act.

#### IX.

The defendant has not paid the said tax or any part thereof.

And it was further stipulated in writing that "if the Court shall find under the law that judgment should go for the plaintiff, said judgment shall be for the sum of Eleven Hundred Dollars (\$1,100) with interest thereon from July 1st, 1915, from which judgment a writ of error or appeal may be prosecuted as provided by law." [41]

From the above and foregoing facts so stipulated to and found by the Court, the Court concludes as a matter of law that the plaintiff is entitled to judg-

ment against the defendant for the sum of Eleven Hundred and Thirty-six Dollars (\$1,136) and all costs, to which ruling of the Court the defendant then and there excepted.

IT IS THEREFORE CONSIDERED BY THE COURT, and so ordered and adjudged that the plaintiff, the Territory of Alaska, do have and recover of and from the defendant, Hoonah Packing Company, a Corporation, the sum of Eleven Hundred and Thirty-Six dollars (\$1,136) with interest thereon from the date hereof at the rate of eight per cent per annum, and all costs herein incurred, for all of which let execution issue. Defendant is allowed thirty days within which to file proposed bill of exceptions.

Dated this 1st day of December, 1915.

ROBERT W. JENNINGS,  
Judge.

Filed in the District Court, District of Alaska, First Division. Dec. 2, 1915. J. W. Bell, Clerk. By L. E. Spray, Deputy. [42]

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*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1326—A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

HOONAH PACKING COMPANY, a Corporation,  
Defendant.

**Assignment of Errors.**

Comes now the Hoonah Packing Company, a corporation, defendant above named, by its attorneys, Messrs. Cheney & Ziegler, and assigns the following errors committed by the Court in making its conclusions of law, and in the rendition of the judgment in this cause, upon which errors it will rely in the Appellate Court.

**I.**

The Court erred in overruling the defendant's demurrer to the plaintiff's complaint, and in entering its order therein on August 11, 1915.

**II.**

The Court erred in holding, as a matter of law, that the plaintiff was entitled to judgment against the defendant for the sum of \$1,136, for the following reasons, to wit:

(a) Because the facts stipulated and agreed to between the plaintiff and defendant show that the defendant has not come within the provisions of chapter 76 of the Session Laws of 1915, the same being the act of April 29, 1915.

(b) Because the last-mentioned act, and especially those provisions relied upon as the basis of this action is and are void and invalid:

First. Because that portion of the act of April 29, [43] 1915, imposing a tax of \$100 on each fish-trap in Alaska is in violation of the provisions contained in sections 3 and 9 of the act of Congress, approved April 24, 1912, entitled: "An act to create a legislative assembly in the Territory of Alaska,

to confer legislative power thereon, and for other purposes," which act is known as the Organic Act of Alaska.

Second. The legislature is limited in its grant of power from Congress to provide for the assessment, levying and collection of taxes in Alaska, and power to act beyond the grant is not an attribute of sovereignty in a Territory.

Third. All taxation of real and personal property in Alaska, under laws passed by the legislature for the purpose of raising revenue for territorial purposes, whether under the name of taxes, excises, licenses, or any other name, must be imposed according to the actual value of the property taxed.

Fourth. Because the act of April 29, 1915, is a local or special act.

Fifth. Because the act in question was passed by the legislative assembly after the expiration of sixty days from the convening of the session in 1915.

### III.

The Court erred in the rendition of its judgment filed December 2, 1915, for the same reasons set forth in the above and foregoing assignment of error Number II.

And for the said errors and others manifest of record herein, defendant and plaintiff in error prays that the said judgment be reversed and said cause remanded for new trial, and for such [44] other

orders as to the Court may seem meet and proper in the premises.

CHENEY & ZIEGLER,  
Attorneys for Hoonah Packing Company, Defendant and Plaintiff in Error.

Filed in the District Court, District of Alaska, First Division. Dec. 6, 1915. J. W. Bell, Clerk. By \_\_\_\_\_, Deputy. [45]

*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1326—A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

HOONAH PACKING COMPANY, a Corporation,  
Defendant,

**Petition for Writ of Error.**

The Hoonah Packing Company, a corporation, defendant in the above-entitled case, feeling itself aggrieved by the findings of the Court and the judgment entered thereon on the 2d day of December, 1915, in the above-entitled cause, comes now by its attorneys, Messrs. Cheney & Ziegler, and petitions said Court for an order allowing the defendant to prosecute a writ of error to the Honorable United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security



which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner will ever pray.

CHENEY & ZIEGLER,  
Attorneys for Defendant.

Filed in the District Court, District of Alaska,  
First Division. Dec. 6, 1915. J. W. Bell, Clerk.  
By \_\_\_\_\_, Deputy. [46]

—————  
*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1326—A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

HOONAH PACKING COMPANY, a Corporation,  
Defendant,

**Order Allowing Writ of Error and Fixing Amount  
of Supersedeas Bond.**

At a stated time, to wit, on the 7th day of December, 1915, at a regular session of the District Court, held in the courtroom, in the city of Juneau, in said District, on said day. Present: The Honorable ROBERT W. JENNINGS, District Judge.

Upon motion of Messrs. Cheney & Ziegler, attor-

neys for defendant, based upon petition for writ of error and an assignment of errors heretofore duly filed herein, it is ordered that a writ of error be and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the judgment heretofore entered herein and herein filed on the 2d day of December, 1915.

It is further ordered that the defendant file a bond in the sum of \$1,500, such bond when taken and approved by this Court and filed herein to operate as a supersedeas from and after the date of such filing.

Done in open court this 7 day of December, 1915.

ROBERT W. JENNINGS,

Judge.

Filed in the District Court, District of Alaska, First Division. Dec. 7, 1915. J. W. Bell, Clerk.  
By \_\_\_\_\_, Deputy. [47]

*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1326—A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

HOONAH PACKING COMPANY, a Corporation,  
Defendant,

**Writ of Error.**

United States of America,—ss.

The President of the United States of America to  
the Honorable Judge of the District Court for  
the Territory of Alaska, Division Number One:  
Greeting:

Because, in the record and proceedings, as also  
in the rendition of the Judgment of a plea which  
is in the District Court before you between the Ter-  
ritory of Alaska, plaintiff, vs. Hoonah Packing  
Company, a corporation, defendant, wherein was  
drawn in question the validity of statute of the Ter-  
ritory of Alaska, entitled: "An act to establish a  
system of taxation, create revenue, and provide for  
the collection thereof, for the Territory of Alaska,  
and for other purposes; and to amend an act entitled,  
'An act to establish a system of taxation, create  
revenue, and provide for collection thereof for the  
Territory of Alaska, and for other purposes' ap-  
proved May 1, 1913, and declaring an emergency"  
approved April 29, 1915, being chapter 76 of the  
Session Laws of Alaska, 1915, and wherein the de-  
cision was in favor of the validity of said act, a mani-  
fest error hath happened to the great prejudice and  
damage of the said defendant, Hoonah Packing  
Company, as is said and appears by the petition  
herein;

Now, Therefore, we being willing that error, if  
any hath been, should be duly corrected and full and  
speedy justice [48] be done to the parties afore-  
said in this behalf, do command you, if judgment be

therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, in the city of San Francisco, in the State of California, together with this writ, so as to have the same at the said place and said circuit on or before thirty days, from the date hereof, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct those errors, which of right and according to the laws and customs of the United States should be done.

Witness, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 11th day of December, 1915.

I attest my hand and the seal of the District Court for Alaska, Division Number One, at the clerk's office at Juneau, Alaska, on the day and year last above written.

JOHN W. BELL,

Clerk of the District Court for the Territory of  
Alaska.

By \_\_\_\_\_,  
Deputy.

Allowed this 11th day of December, 1915.

ROBERT W. JENNINGS,  
Judge.

Filed in the District Court, District of Alaska,  
First Division. Dec. 11, 1915. J. W. Bell, Clerk.  
By \_\_\_\_\_, Deputy. [49]

*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1326—A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

HOONAH PACKING COMPANY, a Corporation,  
Defendant,

**Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS, that we, Hoonah Packing Company, a corporation, as principal, and Sam Hirsch and H. T. Tripp, as sureties, are held firmly bound unto the Territory of Alaska, plaintiff above named, in the sum of \$1,500, to be paid to the said plaintiff, to which payment, well and truly to be made, we bind ourselves and each of us jointly and severally firmly by these presents.

Sealed with our seals this 10 day of December, 1915.

The condition of this obligation is such, that, Whereas, the above-named defendant, Hoonah Packing Company, a corporation, has sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment in the above-entitled cause in the District Court for the Territory of Alaska, Division Number One;

Now, Therefore, if the above-named defendant shall prosecute said writ of error to effect, and answer all costs and damages, if it shall fail to make

good its plea, then this obligation shall be void; otherwise to remain in full force and effect. [50]

HOONAH PACKING COMPANY,

By CHENEY & ZIEGLER,

Its Attorneys of Record.

SIMON HIRSCH,

H. T. TRIPP,

Sureties.

Taken and acknowledged before me this 10th day of December, 1915.

[Notarial Seal]

A. H. ZIEGLER,

Notary Public in and for the Territory of Alaska.

My commission expires July 3, 1917.

The above and forgoing bond is approved as to form, amount and sufficiency of sureties, and the same is to operate as a supersedeas from and after the filing thereof.

ROBERT W. JENNINGS,

Judge of the District Court.

OK.—COBB.

Filed in the District Court, District of Alaska  
First Division. Dec. 11 1915. J. W. Bell Clerk.  
By \_\_\_\_\_, Deputy. [51]

*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1326-A.

TERRITORY OF ALASKA,

Plaintiff,

vs.

HOONAH PACKING COMPANY, a Corporation,  
Defendant.



**Citation on Writ of Error.**

United States of America,—ss.

The President of the United States to the Territory of Alaska, Plaintiff, and to J. H. Cobb, Its Chief Counsel, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held at the city of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the District Court for Alaska, Division Number One, wherein the Hoonah Packing Company, a Corporation plaintiff and you are the defendant in error to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States of America, this 11 day of December, 1915, and of the independence of the United States the one hundred and thirty-ninth.

ROBERT W. JENNINGS,  
Judge.

Filed in the District Court, District of Alaska, First Division. Dec. 11, 1915. J. W. Bell, Clerk.  
By \_\_\_\_\_, Deputy. [52]

Service of the above and foregoing citation in error is hereby admitted to have been duly made at

Juneau, Alaska, this 11th day of December, 1915.

J. H. COBB,

Chief Counsel for the Territory of Alaska, the De-  
fendant in Error. [53]

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*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1326-A.

TERRITORY of ALASKA,

Plaintiff,

vs.

HOONAH PACKING COMPANY, a Corporation,  
Defendant.

**Praeceptum [for Transcript of Record].**

To the Clerk of the Above-entitled Court:

You will prepare a transcript of the record in this cause to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit under the writ of error heretofore perfected to said court and include in said transcript the following pleadings, proceedings and papers on file, to wit:

1. Complaint, July 7, 1915.
2. Defendant's Demurrer, July 21, 1915.
3. Memorandum Opinion, Aug. 11, 1915.
4. Order Overruling Demurrer, Aug. 11, 1915.
5. Amended Answer, Sept. 25, 1915.
6. Demurrer to Amended Answer, Sept. 25, 1915.
7. Order Overruling Demurrer to Amended Answer, Nov. 1, 1915.

8. Reply to Amended Answer, Nov. 6, 1915.
9. Stipulation of Facts, Nov. 20, 1915.
10. Amendments to Stipulation, Nov. 20, 1915.
11. Stipulation, Nov. 29, 1915.
12. Opinion, Nov. 30, 1915.
13. Judgment, Dec. 2, 1915. [54]
14. Assignment of Errors.
15. Petition for Writ of Error.
16. Order Allowing Writ of Error.
17. Writ of Error.
18. Supersedeas Bond.
19. Citation on Writ of Error.
20. Praecipe.

Said transcript to be prepared as required by law, and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

CHENEY & ZIEGLER,

Attorneys for Hoonah Packing Co. Defendant and  
Plaintiff in Error.

Filed in the District Court, District of Alaska,  
First Division. Dec. 11, 1915. J. W. Bell, Clerk.  
By \_\_\_\_\_, Deputy. [55]

[Certificate of Clerk U. S. District Court to Transcript of Record.]

*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1326-A.

TERRITORY of ALASKA,

Plaintiff,

vs.

HOONAH PACKING COMPANY, a Corporation,  
Defendant.

United States of America,  
Territory of Alaska,—ss.

I, J. W. Bell, Clerk of the District Court for the Territory of Alaska, Division Number One, hereby certify that the foregoing and hereto annexed fifty-five pages of typewritten matter, numbered from one to fifty-five inclusive, constitutes a full, true and correct copy of the record, and the whole thereof, as per the praecipe, of the plaintiff in error, on file herein and made a part hereof, in the cause wherein the Hoonah Packing Company, a Corporation, is plaintiff in error, and the Territory of Alaska, is defendant in error, No. 1326-A, as the same appears of record and on file in my office, and that the said record is by virtue of the writ of error and citation issued in this cause and the return thereof in accordance therewith.

I do further certify that this transcript was prepared by me in my office, and the cost of preparation,

examination, and certificate, amounting to Twenty-Three and 40/100 Dollars, has been paid to me by counsel for plaintiff in error.

In Witness Whereof I have hereunto set my hand and the seal of the above-entitled court this 15th day of December, 1915.

[Seal] J. W. BELL,  
Clerk of the District Court for the Territory of  
Alaska.

By \_\_\_\_\_,  
Deputy. [56]

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[Endorsed]: No. 2713. United States Circuit Court of Appeals for the Ninth Circuit. Hoonah Packing Company, a Corporation, Plaintiff in Error, vs. Territory of Alaska, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Alaska, Division No. 1.

Filed December 22, 1915.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.

